

ESTATE OF EMMA COFFEE/SPOTTED  
BEAR/SMELLS

: Order Docketing and Dismissing  
: Appeal as Premature and Refer-  
: ring Matter to the Hearings  
: Division  
:  
: Docket No. IBIA 98-20  
:  
: November 13, 1997

On November 6, 1997, the Board of Indian Appeals (Board) received a filing from Theresa Bird Hat Haun (Appellant), pro se. Appellant seeks review of a June 20, 1997, Order Approving Will and Decree of Distribution entered in the Estate of Emma Coffee/Spotted Bear/Smells (decedent) by Administrative Law Judge Vernon J. Rausch. IP TC 050 R 97. For the reasons discussed below, the Board concludes that it lacks jurisdiction over this matter at this time.

Appellant's filing does not specifically state that it is an appeal. Instead, it states: "[P]ursuant to the provisions as outlined in 43 C.F.R., part 4.242(a), or other authorities as are necessary and proper action as deemed necessary and proper, we hereby petition the [Board] to waive the three year limitation to reopen and review the case, so that a proper probate hearing is held and proper heirs are ascertained in a proper forum."

Section 4.242(a) provides:

Within a period of 3 years from the date of a final decision issued by an administrative law judge \* \* \* any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition shall be addressed to the administrative law judge and filed at his headquarters. A copy of the petition shall be furnished \* \* \* to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations shall be under oath and supported by affidavits.

Appellant's request for waiver of the three-year limitation in section 4.242(a) is confusing because Judge Rausch issued his decision in this estate in June 1997. If Appellant were filing a petition for reopening under 43 C.F.R. § 4.242(a), the petition would be well within the three-year limitation.

Appellant's mailing list shows that she sent copies of her filing to the Superintendent of the Crow Agency, Bureau of Indian Affairs (BIA); the

Billings Area Director, BIA; the Secretary of the Interior; and the Crow Tribal Court. It does not show service on Judge Rausch or his office. The Board was informed by Judge Rausch's office that no petition for rehearing and/or reopening had been filed there. Under 43 C.F.R. § 4.320, the Board has jurisdiction to review "an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal interests in a deceased Indian's trust estate." As the Board has consistently held, an appellant must first seek rehearing or reopening from the administrative law judge before an appeal may be filed with the Board. See, e.g., Estate of Albert William Cobe, 28 IBIA 282 (1995); Estate of Milton Jenkins, 28 IBIA 228 (1995). To the extent Appellant intended her present filing to be an appeal to the Board, it is premature. However, based on her reference to 43 C.F.R. § 4.242(a), Appellant may have intended her filing to be a petition for reopening. The Board therefore refers the filing to Judge Rausch's office.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Rausch's June 20, 1997, order is dismissed without prejudice as premature. Appellant's filing is referred to Judge Rausch's office for a determination as to whether it is a proper and timely petition for rehearing or reopening.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge